

Remarks/Arguments

Claims 1-5 are pending and are rejected under 35 USC § 103(a) over US Publication 2005/0101628 (Jiao et al.) in view of Wang et al. (*Neuroscience*, 2002, 114(3), pp.529-546). Since Jiao et al. was published after the filing date of the current application, it is apparently being cited as a 35 USC § 103(a) obviousness reference under the provisions of 35 USC § 102(e).

The Jiao et al. reference is disqualified as prior art for purposes of obviousness under the provisions of 35 USC § 103(c)(1) because at the time the instant invention was made, the instant invention and the Jiao et al. patent application were both "owned by the same person or subject to an obligation of assignment to the same person."

- The Jiao et al. patent application is jointly owned by Merck & Co., Inc. and Merck Sharp & Dohme Ltd. by virtue of assignments from the inventors. Merck Sharp & Dohme Ltd is a wholly owned subsidiary of Merck & Co., Inc.
- When the instant invention was made, the inventors were obligated to assign their rights to Merck & Co., Inc.

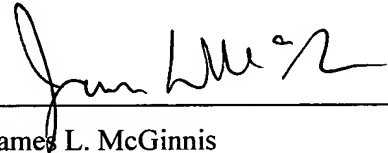
Therefore, both the instant invention and that claimed in Jiao et al. were owned by Merck & Co., Inc. or were subject to an obligation of assignment to Merck & Co., Inc. at the time that the instant invention was made.

Therefore, Jiao et al. cannot be cited as a reference under 35 USC § 103. The Wang et al. publication was cited only as a supporting reference. The pending rejection should be withdrawn.

It is respectfully submitted that the claims are in condition for allowance. Such allowance is earnestly solicited. The examiner is invited to telephone the undersigned attorney if she wishes to discuss any matter with respect to the current application.

As this response is timely, no fee is due. If a fee is required for any reason for reconsideration of the pending Office Action, the fee may be charged to Deposit Account No. 13-2755.

Respectfully submitted,

By 

James L. McGinnis

Reg. No. 34,387

Attorney for Applicant

MERCK & CO., Inc.

P.O. Box 2000

Rahway, New Jersey 07065-0907

(732) 594-0641

Date: June 27, 2008